

Bradley Pacific Aviation, Inc. and Hawaii Teamsters and Allied Workers Union, Local 996. Case 37-RC-4134

August 9, 2007

DECISION AND ORDER

BY MEMBERS SCHAUMBER, KIRSANOW, AND WALSH

On May 16, 2006, Hawaii Teamsters and Allied Workers Union, Local 996 (the Union) filed a petition seeking to represent all regular full-time and part-time fuelers and mechanics employed by Bradley Pacific Aviation, Inc. (the Employer or Bradley), at Maui-Kahului Airport (MKA) in Kahului, Maui. The Employer asserts that it is directly controlled by several common carriers subject to the jurisdiction of the Railway Labor Act, and that, therefore, the National Labor Relations Board lacks jurisdiction under Section 2(2) of the National Labor Relations Act.¹ After a hearing, the Regional Director transferred the proceeding to the Board.²

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

On the entire record in this case, the Board finds:

The Employer provides aviation support services for approximately 18 major air carriers at MKA, pursuant to its contracts with the carriers.³ These services include providing fueling, fuel storage, ground service operations, and other aircraft and passenger services. In the course of providing these services, the Employer's mechanics service and repair fueling equipment, ground support equipment, and other equipment and vehicles used by Bradley employees. The NMB found, and we agree, that Bradley employees, including mechanics,

perform work that is traditionally performed by employees of air carriers.

The record indicates that the carriers exercise substantial control over the Employer's MKA operations. Carriers require Bradley employees to follow their operating procedures, including fueling standards developed by the carriers collectively, as well as specific procedures in manuals supplied by each individual carrier. Carrier contracts with the Employer also require employees to follow specific recordkeeping procedures for receiving, storing, and dispensing fuel. Hours worked by Bradley employees are determined by the schedules and needs of the carriers, and the carriers can require Bradley employees to work overtime. Each carrier has a representative at MKA who works with Bradley and its employees on a daily basis. Carrier employees interact frequently with Bradley employees regarding fueling, and carriers can fine the Employer for fueling delays. Some carriers require Bradley employees to attend regular meetings to discuss safety, performance, and other operational matters.

The carriers monitor Bradley's compliance with its service standards, and a carrier has requested that Bradley remove an unsatisfactory employee. Although the carrier ultimately granted the Employer's request to allow the employee to return, the Employer only initiated an investigation after the carrier complained. Bradley has also issued verbal and written warnings to employees pursuant to carrier complaints and audit reports. During periodic audits, some of which are unannounced, carriers have access to the Employer's training, personnel, equipment, maintenance, and fueling records.

Carriers require the Employer to maintain training records and supply current rosters of employees who have successfully completed carrier-mandated training and are thereby permitted to service carrier aircraft. Carriers determine when, how often, and what kind of training is required. Some carrier representatives directly train Bradley employees and designate them as carrier trainers who then train other Bradley employees. Some carriers conduct recurrent training or require periodic testing of employees to demonstrate continued proficiency in carrier procedures.

Carriers require written notice when the Employer brings new equipment into service and when existing equipment is modified. This notice includes documentation and checks performed pursuant to collectively developed carrier standards, which includes certain manufacturing specifications for the equipment. Carriers reserve the right to inspect equipment before the Employer purchases it, and annually thereafter. Although employees wear Bradley uniforms and are not required to wear

¹ We find no merit to the Petitioner's arguments that the Board has jurisdiction over the Employer because the Employer submitted to the Board's jurisdiction in the Stipulated Election Agreement, and that the Employer's jurisdictional challenge was asserted in an untimely manner. Sec. 2(2) of the Act is a statutory limitation on the Board's jurisdiction, which may be raised at any time. *Chelsea Catering Corp.*, 309 NLRB 822 fn. 2 (1992) (citing *International Total Services*, 270 NLRB 645 fn. 1 (1984)).

² The Regional Director initially conducted a representation election on June 27, 2006, pursuant to a stipulated election agreement. The vote was 13 for the Petitioner, 3 against the Petitioner, with 4 challenged ballots, an insufficient number to affect the results of the election. The Employer filed a timely objection to the election on the sole ground that it is not subject to the National Labor Relations Act, and the Regional Director held a hearing. After the hearing, the Regional Director transferred the case to the Board, and the Board referred the case to the National Mediation Board (NMB) for a jurisdictional opinion, as recommended by the hearing officer and as discussed below.

³ Approximately 90 percent of these services are provided to national and international air carriers, and the remaining services are provided to several inter-island carriers and a small percentage of corporate and private jets.

any carrier insignia, carrier contracts require Bradley employees to adhere to personal appearance and grooming standards.

Section 2(2) of the National Labor Relations Act provides that the term “employer” shall not include “any person subject to the Railway Labor Act.” 29 U.S.C. § 152(2). Similarly, Section 2(3) of the Act provides that the term “employee” does not include “any individual employed by an employer subject to the Railway Labor Act.” 29 U.S.C. § 152(3). The Railway Labor Act, as amended, applies to:

Every common carrier by air engaged in interstate or foreign commerce, and every carrier by air transporting mail for or under contract with the United States Government, and every air pilot or other person who performs any work as an employee or subordinate official of such carrier or carriers, subject to its or their continuing authority to supervise and direct the manner or rendition of his service.

45 U.S.C. § 151 First and 181.

On October 18, 2006, the Board requested that the NMB study the record in this case and determine the applicability of the Railway Labor Act to the Employer. The NMB subsequently issued an opinion stating its view that the Employer is a carrier subject to the Railway Labor Act. *Bradley Pacific Aviation, Inc.*, 34 NMB No. 20 (2007).⁴

Having considered these facts in light of the opinion issued by the NMB, we find that the Employer is engaged in interstate air common carriage so as to bring it within the jurisdiction of the NMB pursuant to Section 201 of Title II of the Railway Labor Act. Accordingly, we shall vacate the election and dismiss the petition.

ORDER

IT IS ORDERED that the petition in Case 37–RC–4134 is dismissed.

⁴ The NMB uses a two-pronged jurisdictional analysis: (1) whether the work is traditionally performed by employees of air or rail carriers; and (2) whether a common carrier exercises direct or indirect ownership control. The NMB concluded that both prongs of the test had been met.